White Supreme Court, U. S.
FILED
OCT 13 1904
JAMES H. MCKENNEY,
Clerk.

HENRY LOCKHART, Appellant,
vs.
H. O. LEEDS ET AL.

No. 10.

HENRY LOCKHART, Appellant,
vs.
H. O. LEEDS ET AL.

No. 269.

Motion to pass No. 10 under Rule 26, and to advance No. 269, that they may be heard as one case.

J. H. McGOWAN,
Attorney for Complainant.

PRESS OF GIBSON BROTHERS.
WASHINGTON, D. C.
1904.

Supreme Court of the United States.

OCTOBER TERM, 1904.

HENRY LOCKHART, APPELLANT, *v.* H. C. LEEDS ET. ALS.	*No.* 10.
HENRY LOCKHART, APPELLANT, *v.* H. C. LEEDS ET. ALS.	*No.* 289.

Motion to pass No. 10 under Rule 26, and to advance No. 289, that they may be heard as one case.

Now comes the complainant in the said cases numbered 10 and 289 on present docket, and moves the court to pass said case numbered 10, under rule 26, and advance case numbered 289, fixing some time during the term, convenient to the Court, when they may be heard together as one case.

STATEMENT.

During the October term, 1900, the ejectment case of Lockhart *v.* Johnson *et als.* (181 U. S., 516) was submitted to and decided by this Court. The parties in that case were the same as the parties in Nos. 10 and 289, and the property in controversy (a mining claim within the exterior limits of a Mexican grant in the Territory of New Mexico), the same.

In the ejectment case this Court held, in substance, that land within a Mexican grant is not thereby reserved from the operation of the mineral laws of the United States. The Court further held that an action of ejectment to recover mining property cannot be maintained on the ground that the defendants have acquired it by a relocation in pursuance of a conspiracy with plaintiff's partner, whereby that partner, who was not one of the relocators, ceased to do the necessary work on the mine and abandoned its possession, since these facts, whatever equities they may raise as against the defendants, give plaintiff no legal title.

The Court also held in the ejectment suit that although the plaintiff had no right to maintain that action, he ought not to be embarrassed by a judgment which would prohibit him from pursuing another remedy to save such equities as he might have, and judgment was entered accordingly.

The complainant now brings to the attention of the Court that he first sought his remedy in the matter by a bill in equity in the District Court of the County of Bernalillo in said Territory, and that the same was ordered dismissed on demurrer, on the ground as alleged by the Court, that complainant had a complete remedy at law. Succeeding this decision an amended bill was filed and was demurred to, but for the time being was allowed to

remain in abeyance in the Court, and in the meantime, following the suggestions of the Court, the ejectment suit was begun and prosecuted to a final judgment by this Court. But before such final judgment was rendered (May 13, 1901) the said amended bill of complaint and the pending demurrer were called up in said District Court for further hearing and the bill ordered to be dismissed, from which decree complainant appealed to the Supreme Court of the Territory, which Court, on August 24, 1900, affirmed said decree.

The ejectment case was then pending in this Court and was not finally decided until more than eight months later. Complainant appealed to this Court from the decree of August 24, 1900, which case is now pending as said Number 10.

But the final decision in the ejectment case on the two points above named, made it desirable, in order that complete justice could be decreed, as complainant was advised by his counsel, to commence new proceedings in equity with such changes in his bill of complaint as were indicated and made necessary by said last-named decision. Such bill was duly filed, was dismissed on demurrer, the decree of the District Court being affirmed by the territorial Supreme Court, and that case is now here on appeal, being the case numbered 289.

From these facts which duly appear in the decision of this court, and in the printed records of Nos. 10 and 289, it is suggested that the Court should not be burdened with two hearings in the one matter, and that complainant should not be put to the hazard of a hearing on his bill in No. 10, which could not be amended after being advised more fully as to his rights in the premises by the decision of this Court in the ejectment case; neither

should complainant be put to the expense of two hearings in the one case.

If the cases could be assigned to a call about midway of the term, say in January, it would seem to serve every requirement of justice, enabling counsel to present the whole matter in one argument.

J. H. McGOWAN,
Attorney for Complainant.